IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 659 OF 1999
WITH
CRIMINAL APPEAL NO. 741 OF 1999

Criminal Appeal No.659 of 1999

Pandurang Ganpat Thakur & Anr. ....
Appellants.

(Orig.Accd.Nos.1 & 4)

Versus

The State of Maharashtra ....Respondent.

Mr.A. P. Mundargi with Mr. Rahul Thakur and Mr.K. S. Patil, Advs. for the appellants.

Mrs.U. V. Kejriwal, APP for the State.

Criminal Appeal No.741 of 1999

Dinanath Pandurang Thakur..... .....Appellant
(Orig.Accd No.2)

Versus

The State of Maharashtra..... ...Respondent.

Mr.K. S. Patil, Adv. for the appellant.

Mr. B. R. Patil, PP for the State.

CORAM: V.G. PALSHIKAR
AND
ANOOP V. MOHTA, JJ.

1st November, 2004.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order passed by II Additional Sessions Judge, Raigad-Alibag, on 27.10.1999 holding the appellants-orig. Accused Nos.1 and 4 guilty for the offences punishable under sections 302 read with section 34 of IPC sentencing them to suffer R.I. For life and to pay a fine of Rs.5000/- each, in default to suffer R.I. For six months on first count and further holding them guilty under sections 324 read with section 34 IPC sentencing them to suffer R.I. For two years and to pay fine of Rs.2,500/- each and in default to suffer R.I. For three months the appellants-orig. Accused have preferred these appeals on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of learned counsel appearing on behalf of the appellants and the learned Assistant Public Prosecutor we have scrutinized and reappreciated the evidence on the record.

3. The prosecution story as revealed on reappreciation of evidence on record stated briefly is as under:

On 23.4.1997 deceased Ankush Patil was employed in the business of carrying water by tankers to different industrial units. He was assisted in the business by his brother-in-law Ashok. When Ashok was filling up the tanker from a nallah near about accused No.2-Dinanath threatened him not to fill the tanker from the nallah, upon which accused Nos.1, 2 and 4 followed him and advanced to assault him. He therefore rushed to wife of Ankush and asked her to send Ankush on the site. After filling up the

tanker Ashok was returning towards village Kopar Gavan when Dinanath, Pandurang, Manohar and three other persons climbed the cabin of the tanker and started assaulting the driver Ashok. He was dragged out of the cabin and was manhandled. He was assaulted with wooden handle of spade. At that very time Ankush reached there with Prabhavati and when Ankush tried to intervene he was assaulted with stone and wooden spade handles by accused persons. When Prabhavati tried to save him she was also assaulted. After the assault accused persons ran away. The injured were admitted to hospital where ultimately Ankush succumbed to injuries. First Information Report was lodged by P.W. 2 – Virendra Gharat to Uran police station and after due investigation accused persons were arrested. The prosecution examined as many as 12 witnesses to prove its case and the learned trial Judge on appreciation of entire evidence on record came to the conclusion of guilt and therefore proceeded to convict the accused as aforesaid. It is this order of conviction which is challenged before us by two above mentioned appeals.

4. As already observed by us we reappreciated the entire material evidence on record. There is ample material on record to prove the fact of assault. Eye witness account of Ashok and Prabhavati is not shaken by cross examination. FIR is immediately lodged by P.W. 2 – Virendra, the findings of the learned trial Judge that the accused persons were guilt of assault cannot therefore interfered with or found fault with. That the incident took place as alleged by the prosecution is proved beyond doubt. That the accused persons assaulted Ashok and Ankush with wooden spade handles is also not in dispute. That there was inimical relationship between the two i.e. Accused and the victim

is also not in dispute. The fact that the assault took place by four persons is also proved by the prosecution.

5. If the eye witness version of the witnesses is scrutinized it will be seen that they describe the assault with all possible details. Each of them says that the assault was with the wooden sticks or handles of spade. It is also a fact established on record that none of the injured died immediately. The assault took place on 23.4.1997, FIR was recorded on the same day and Ankush died on 27.4.2997 i.e. four days after the assault. In such circumstances it is not possible to reject the ocular testimony of the injured witnesses for coming to the conclusion that there was no assault at all. In our opinion also assault did take place as described by the witnesses.

6. The crucial question which arises is whether that assault was with intent to cause murder of either Ankush or Ashok. The learned Judge has found, relying on the injuries on the persons of the dead that the intention was to cause murder. We have considered the medical evidence also. We have considered the fact that the victim Ankush died four days after the assault. The assault has taken place by wooden handles of spade. In so far as injuries on the persons of Ashok is concerned admittedly they were of grievous nature as opined by P.W. 11 – Dr.Namita. Similar is the case of injuries on the person of Ankush. There was two blows on his forehead but there is no fracture. There is some depression on the right orbital part of frontal region and the doctor describes this as grievous injury. From the injury report of the two persons who were injured it will therefore be seen that the injuries were grievous. The intention of the

accused form these injuries can therefore be inferred as one of causing grievous hurt. It can also be inferred that they knew that the injury is such as may result in death. But for coming to such conclusion causing of the injuries should be by some weapon. In this case the weapon of assault is wooden handle, more injuries are on the body than on the head. The pattern in which the injuries are caused therefore does not disclose that they wanted to cause such injuries as are likely to result in death. It is therefore not possible to accept the conclusion of the learned trial Judge that the accused persons were guilty of causing murder. It is not possible to come to the conclusion that they intended to cause such injury as in their opinion was likely to cause death. The case therefore cannot be covered by the provisions of section 304 of Indian Penal Code. The order of the learned trial Judge holding them guilty of murder cannot therefore be sustained.

7. In our opinion, the prosecution has proved beyond reasonable doubt the commission of offence by the accused punishable under section 326 of the Indian Penal Code of intentionally causing grievous hurt to Ankush and Ashok. In our opinion, interest of justice would be met if the accused are acquitted of conviction under section 302 of IPC and instead convicted for the offence punishable under section 326 of Indian Penal Code. Accused are in jail for the last eight years and more. They are therefore sentenced to suffer rigorous imprisonment for eight years. If they have already undergone the said sentence they be released forthwith. Both the appeals are accordingly partly allowed in terms as stated above.